

Exhibit O

Transcript of a December 12, 2016 hearing in the matter Bakken Resources, Inc. v. Holms, CDV-2016-612 pending in the Montana First Judicial District Court, Lewis & Clark County

1 MONTANA FIRST JUDICIAL DISTRICT

2 COUNTY OF LEWIS AND CLARK

3 * * * * *

4
5 BAKKEN RESOURCES, INC.,)

)

6 PLAINTIFF,)

7 VS.)

CAUSE NO. DDV 2016-612

8 VAL M. HOLMS, et al.,)

)

9 DEFENDANTS.)

10)

11
12
13 TRANSCRIPT OF PROCEEDINGS

14
15 Before the Honorable James Reynolds, Judge Presiding

16
17 Date and time: Monday, December 12, 2016
18 10:20 a.m.

19 Place: Lewis & Clark County Courthouse
20 228 Broadway
21 Helena, MT 59601

22 YVETTE M. HEINZE, CSR, RPR
23 Official Reporter, First Judicial District
24 228 Broadway, Second Floor
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APPEARANCES

For the Plaintiff:

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Helena, MT 59601

For the Defendant:

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DOUBEK, PYFER & FOX, LLP
307 N. Jackson Street
Helena, MT 59602

For Third-Party Defendant:

Jordan York Crosby
P.O. Box 1746
Great Falls, MT 59403

Also present:

WESLEY PAUL
ALLAN HOLMS

1 December 12th, 2016, Monday

2

3 THE COURT: Please be seated.

4 MR. DOUBEK: Your Honor, I just put that out
5 there. That's our position today.

6 (Handing judge paperwork.)

7 THE COURT: All right.

8 MR. DOUBEK: It won't change tomorrow, but
9 it's our position today.

10 THE COURT: It's not going to? Okay.

11 So I'm a little confused over where we are
12 today to tell you the truth. I also received a
13 memorandum for Bakken Resources.

14 MR. DOUBEK: And we received that.

15 THE COURT: Is there a difference between
16 the two positions?

17 MR. DOUBEK: There is, and that's why we're
18 here, Judge.

19 THE COURT: Okay. I guess I need to have
20 somebody tell me what that is.

21 MR. DOUBEK: Your Honor, I would like to
22 give a little bit of an overview, and then I have two
23 witnesses I would like to call. I don't think either
24 one of them will be too terribly long. But this is
25 the time and place for a hearing pursuant to the

1 Court's TRO issued on October 19th.

2 And so what we -- we do indeed have
3 competing interests. I know that the other side's
4 position is, well, just put everything on hold and
5 let the Nevada court address everything. And I have
6 a little opening statement about that if I might.

7 THE COURT: Okay.

8 MR. DOUBEK: Your Honor, the only action
9 commenced by Bakken Inc. -- and, for that matter, by
10 Allan Holms -- was this action before this Court.
11 Bakken is domiciled here in Helena. Its officers
12 work and reside here. It filed this action here and
13 has asserted that this Court, not some other Court,
14 has jurisdiction over all of the matters. It chose
15 to file this action.

16 And, now, Bakken wants to keep the two TROs
17 in place until the Court in Nevada has a trial over
18 some issues, not all the same issues, next spring.

19 The Bakken company says it's a matter of
20 principle of comity. Then, if that's true, why did
21 they file this lawsuit? Because the origin of the
22 lawsuit in Nevada was a derivative action brought by
23 a shareholder and somehow Bakken got brought in
24 third-party-wise. But it didn't initiate the lawsuit
25 in Nevada.

1 Your Honor, years ago, my partner Floyd
2 Small told me when he was talking about his view on
3 corporations is that the only problem with
4 corporations is that over time they seem to develop
5 the attitude that they exist for the benefit of those
6 running the corporation, not for the benefit of those
7 who own the corporation, the shareholders.

8 In this case, you have a public company that
9 stopped providing quarterly or yearly reports to its
10 shareholders. It failed to have a shareholder
11 meeting for over two years. It has spent over
12 \$1.7 million over the past couple of years on
13 attorney's fees, mostly going to in-house corporate
14 counsel, or corporate counsel Wes Paul.

15 Then Mr. Paul got a fellow that he been in
16 businesses with on other ventures, none of which have
17 ever succeeded, named Carl George. He got him
18 involved, and they created Eagle Equity and sold
19 Bakken a bill of goods, which would prevent others
20 from doing anything that might upset their little
21 apple cart or their nest egg, as it has turned out.

22 And when the shareholders, like Allan Holms,
23 stepped up to take control of the company on behalf
24 of the shareholders, Eagle Equity suddenly became a
25 major, or a majority shareholder.

1 Carl George, who has had many lawsuits and
2 judgments filed against him -- we appended those to
3 our papers in support of the TRO -- is evidently,
4 according to Bakken, now in control. He and Wes
5 Paul, though, have done business before, and now they
6 have concocted a way to prevent shareholders from
7 asserting any kind of control over the situation by
8 giving 51 percent of the company to Eagle Equity in
9 return for \$600,000, which is a terrible deal,
10 considering it has \$4 million in the bank.

11 And considering at the last hearing, Dan
12 Anderson, who is the president of the company,
13 admitted that Eagle was under no further obligation
14 to advance any more funds to the company and had the
15 power to liquidate the company and walk away with
16 51 percent of the company for the \$600,000 that it
17 paid to the company.

18 Interesting also in the papers that have
19 been filed before the Court, the company hasn't
20 received the \$600,000. The \$600,000, all we know,
21 according to the affidavit of Wes Paul, is sitting in
22 his IOLTA account.

23 Now, as Bakken has truly become the fatted
24 calf of Eagle Equity and Wes Paul, it is thus our
25 request that the Court grant the preliminary

1 injunction -- the TRO to become a preliminary
2 injunction, holding that Eagle Equity transaction as
3 a sham, set up as a means of thwarting any exercise
4 of any shareholder rights; that the Holms' effort to
5 take shareholder control did not violate any proxy
6 solicitation rules; and that the actions by Mr. Holms
7 and the two other fellows who were accountants who
8 came in to try to right the company and replace the
9 board of directors should be affirmed.

10 Alternatively, and I say this somewhat
11 reluctantly, because from the testimony that we'll
12 present today it will be clear that Allan Holms
13 didn't violate any proxy solicitation rules, and what
14 he did on July 20th, 2016, was perfectly right and
15 proper under Nevada law and, for that matter, Montana
16 law.

17 But, in any event, if the Court were to
18 order a shareholder meeting without the equity
19 involvement -- because it's a sham -- send out notice
20 and proxies, hold the shareholder meeting within
21 30 days, and report the results within 10 days
22 thereafter, and perhaps appoint a master to oversee
23 the shareholder meeting and report back the results
24 of the Court, that would be our alternative request
25 in this case.

1 I have two witnesses I would like to
2 present. And, as I indicated, they won't be very
3 lengthy.

4 THE COURT: I am a little unclear. I guess
5 it's Monday morning so my mind isn't yet fully up to
6 speed. But as I read the memo submitted on behalf of
7 Bakken Resources, they ask that the TROs granted at
8 the request of the defendants be maintained. And
9 that's --

10 MR. DOUBEK: They want everything
11 maintained.

12 THE COURT: Right.

13 MR. DOUBEK: And then just go with whatever
14 Nevada says.

15 THE COURT: But you folks are the ones who
16 asked for those TROs, though.

17 MR. DOUBEK: We asked for the one in
18 October, yes, sir.

19 THE COURT: Okay. So, now, are you telling
20 me I should modify that?

21 MR. DOUBEK: I think the next step is to
22 go -- assuming they are not able to rebut the TRO,
23 that the Court go to the next step, and that is let's
24 move this case along and order a shareholder meeting.

25 THE COURT: Okay.

1 MR. DOUBEK: Set aside the Eagle Equity
2 transaction, because that is just garbage. That's
3 just absolutely garbage. It's a sham transaction.

4 And if for whatever reason the Court doesn't
5 want to recognize that Allan Holms acted properly on
6 July 20th, when he came in and asserted about
7 80 percent of the shareholder vote to have a
8 shareholder meeting and replace the board, then fine.
9 Let's have a -- let's start the shareholder
10 process -- the shareholding meeting process anew,
11 have a shareholder meeting, and report the results of
12 that back to this Court.

13 THE COURT: But don't I have to have some
14 sort of factual determination, something along the
15 line somewhere that says -- you are saying it's
16 clearly a sham. They are going to get up and say it
17 isn't. Right?

18 MR. DOUBEK: Well, and they can. And we're
19 going to offer some testimony today about that.

20 THE COURT: But isn't that more of a
21 long-term factual determination than something I can
22 make on short-term order to show cause?

23 MR. DOUBEK: I think, your Honor, it's so
24 clear that the Court can see through it and see what
25 it is and order that it's a sham transaction.

1 THE COURT: Okay. And is the proceeding in
2 Nevada -- again, I apologize for not having this all
3 in my head yet, but is that -- will that determine
4 whether Eagle Equity was a --

5 MR. DOUBEK: Not really.

6 THE COURT: No?

7 MR. DOUBEK: Because they weren't even a --
8 now, they say, "Oh, yeah. Well, that's going to be
9 an issue before the Court." That action started with
10 a shareholder action against the company and Val
11 Holms, one of the -- the majority shareholder at that
12 time.

13 At about that same time, the Eagle
14 transaction was put together as a means clearly to
15 thwart the settlement that was about to be achieved
16 between that plaintiff and Mr. Holms. And it was
17 also set up to prevent any shareholders from coming
18 forward and asserting their rights. So that now you
19 had Eagle Equity for 600,000, which maybe it's been
20 paid; maybe it hasn't been paid. We don't know. But
21 for \$600,000, they now have 51 percent of a company
22 that Mr. Anderson testified to was worth at least \$7
23 million. That doesn't make any sense.

24 And what we submitted in our TRO papers was
25 an outline of all of these judgments and lawsuits

1 that Mr. Carl has been -- nothing in there has
2 anything to do with oil and gas. This guy is just a
3 huckster. You know, he owes his wife \$400,000 in the
4 divorce. He owes her lawyers. He owes this. He
5 owes that. He's been run out of all kinds of
6 transactions that he's gotten his fingers into. But
7 he and Mr. Paul have been in business before on other
8 things that never succeeded, but have been in
9 business in other things.

10 So this transaction has been set up for no
11 other purpose but to prevent shareholders from
12 stepping forward and taking their company back after
13 two years of silence by the folks running the
14 company. No quarterlies. No yearlies. No
15 shareholders meetings. They have been kept in the
16 dark, although they kind of know what's been going
17 on, and they are tired of seeing others pillage, you
18 know, the Bakken as an entity.

19 THE COURT: All right. Mr. Goe, did you
20 agree with everything he said?

21 MR. GOE: I agree with probably nothing he
22 said --

23 MR. DOUBEK: Oh, come on.

24 MR. GOE: -- other than perhaps, "Good
25 morning." And I think the Court has already hit the

1 nail on the head here. They filed for a TRO with
2 specific language. While we think there's reasons
3 not to continue the TRO, we are willing to let it
4 continue as it is and as it was previously entered by
5 this Court.

6 And what it specifically says is that things
7 are going to remain the same, pending judicial
8 determination of various issues regarding both the
9 proxy, but more importantly, the Eagle Equity
10 transaction.

11 That's all that was contained in their
12 application. That's all that was contained in the
13 memorandum that they filed in support of the TRO.

14 They now come before this Court, and you
15 will see it in the pleading that I received from
16 Mr. Doubek just right before this hearing, which is
17 called their position statement, wants totally
18 different relief than what this hearing is here and
19 was scheduled for, which is whether or not the TRO
20 that was previously obtained should remain in effect,
21 along with the TRO that we previously maintain.
22 We're okay with that. That seems to be the proper
23 way to proceed.

24 They now want to introduce testimony and
25 evidence regarding issues that are not even before

1 the Court right now. The only issue has to do with
2 whether or not this TRO should remain in effect, I
3 assume, as a preliminary injunction, which is
4 something that we are willing to do.

5 What's really troubling about this is that
6 they are trying to shift this from whether or not the
7 TRO should issue pending these various judicial
8 determinations, and then change today's hearing to
9 something totally different, which is a hearing on
10 the propriety of the Eagle Equity transaction itself.
11 We are not prepared to deal with that today, and
12 that's not an issue that's properly before the Court,
13 if we are, in fact, willing to enter into a TRO which
14 allows for a later judicial determination regarding
15 that provision or that transaction.

16 What's really odd, though, is this bizarre
17 idea that Bakken Resources started this litigation.
18 It is false, and I'll tell you why. In Nevada, there
19 has been a derivative action going on since about
20 2014, that has many of the issues that Mr. Doubek
21 previously referenced.

22 And if I may, I don't know if the Court even
23 had an opportunity to look at it, we filed a motion
24 for stay also and was done previously, which kind of
25 -- and I don't know if the Court has had an

1 opportunity to review it.

2 THE COURT: I haven't.

3 MR. GOE: But what it provides to the Court
4 is a summary of the proceedings before Nevada and why
5 Nevada court has primacy in this particular matter.

6 Looking away, to begin with, it's a Nevada
7 corporation. It's governed by Nevada law, which is
8 different than Montana's, et cetera, et cetera. But
9 the fact of the matter is after the Eagle Equity
10 transaction came into being, Mr. Doubek's client, Val
11 Holms, filed an action in Nevada specifically
12 challenging the Eagle Equity transaction. In that
13 proceeding, he argued the very things they want to
14 argue all over again, which is that it was unfair,
15 it's a horrible thing, it's a terrible deal,
16 et cetera, et cetera.

17 The Court held a hearing on whether or not
18 it should issue or continue a preliminary injunction
19 that Mr. Holms had received initially from an earlier
20 judge. The Court held a hearing, and in that hearing
21 he heard from Dan Anderson, and he heard from Carl
22 George. And at the close of that hearing, and as you
23 have seen before, the Court made some findings in
24 favor of Bakken Resources regarding the Eagle Equity
25 transaction.

1 And in that particular proceeding -- well,
2 and let me back up. In the hearing that the Nevada
3 judge had -- and this is before any action that
4 Mr. Doubek is here on was ever filed. In that
5 particular proceeding involving Defendant Val Holms
6 in this proceeding, who is now represented by
7 Mr. Doubek, he was represented by counsel. He had an
8 opportunity to cross-examine Carl George. He had an
9 opportunity to present witnesses. He had an
10 opportunity to comment on exhibits.

11 And the Court at the close of that hearing
12 on June 27th made a finding on the record that the
13 transaction more than likely -- so just set aside the
14 preliminary injunction, or the TRO -- that the
15 transaction was legal and appropriate pursuant to the
16 Nevada law under which that corporation is organized.

17 After hearing that -- and there's no
18 question about it, and this is reflected in our
19 briefs that we filed -- there was an attempt to
20 suddenly -- "Well, let's get a whole bunch of proxies
21 and try to get ourselves someplace else." And that
22 is the basis for some of the proxies that -- excuse
23 me -- that the Court has seen already. But let me
24 just back up for a second.

25 In the proceeding before June 27th, and I

1 just filed this with the Court because Mr. Doubek
2 took two pages of it and attached it as an exhibit to
3 his brief, but --

4 THE COURT: Where is it? I have it
5 somewhere?

6 MR. GOE: You do. I just filed this, this
7 morning. I provided John a copy. This is the
8 transcript from that hearing.

9 THE COURT: Okay.

10 MR. GOE: And what I provided, if I may
11 approach the bench?

12 THE COURT: You may.

13 Well, I'm interested -- you are referring to
14 findings that the judge made down there. I'd like to
15 look at those.

16 MR. GOE: Yes. What he did, your Honor,
17 is -- and this is my affidavit on it, kind of gives
18 you a guideline of where certain things are.

19 The judge in Nevada made some findings, and
20 then he later memorialized those in his written
21 order.

22 MR. CROSBY: July 14th.

23 MR. GOE: July 14th. Thank you, Jordan.

24 THE COURT: Where do I find that?

25 MR. GOE: That is attached to our brief in

1 support of the TRO, which we already had a hearing
2 on, as Exhibit A. I apologize. I just don't have it
3 in front of me right now.

4 MR. CROSBY: I can get it for you.

5 MR. GOE: And those materials are cited at
6 length in our briefing on the motion to stay and are
7 incorporated for purposes of argument here.

8 It's also attached to a motion to dismiss by
9 the third-party defendants. And this is the
10 July 14th order entered by Judge Flanagan relating to
11 the Eagle Equity transaction and his findings after
12 that hearing that I just provided you a copy of the
13 record of.

14 THE COURT: All right. Go ahead. I'm sorry
15 I interrupted you.

16 MR. GOE: And what happened after that
17 hearing and after Judge Flanagan's order relating the
18 propriety of the Eagle Equity transaction, he decided
19 -- excuse me -- Val Holms and Allan Holms, and you
20 heard some of the testimony the other day, decided to
21 try to circumvent that order by getting proxies and
22 scampering up here to Montana and taking over the
23 corporation.

24 And what happened was -- and we have the
25 affidavits from Dan Anderson and the affidavit from

1 Karen Midtlyng and the affidavit from Wes Paul, which
2 this Court previously looked at -- they tried to take
3 over the office. That is what precipitated the
4 filing of this case. It's because they were losing
5 in Nevada, had lost in Nevada, and they had to
6 scamper up to Montana to try to find some other Court
7 that might be more sympathetic to their particular
8 position.

9 But at the time they did that, they had
10 already had a hearing regarding the propriety of the
11 Eagle Equity transaction. And, as I indicated
12 before, both in the transcript and in the Court's
13 order, it talks about those issues and found it to be
14 consistent with the Nevada business judgment rule.

15 And not only did the Court make those
16 findings, but it did so after hearing testimony
17 regarding the transaction. And Defendant Val Holms
18 had a full opportunity to cross-examine, and that's
19 what the transcript that I just provided to you
20 shows.

21 So, as we move forward, what happened is we
22 were forced to do something up here because Allan
23 Holms and his entourage barged into the office, tried
24 to take it over, tried to throw everybody out, police
25 show up, and, ultimately, they leave.

1 We filed our motion, our motion for a TRO,
2 which is granted by Judge Seeley, and then was
3 continued when we had the hearing on August 9th
4 regarding the underlying request for a TRO in this
5 matter.

6 And during that hearing, the Court asked --
7 and it's found at page 138 of the transcript. If you
8 want additional testimony regarding the proxy issues
9 or the propriety of that TRO, you have to ask for a
10 hearing and let the Court know. We didn't get
11 anything like that.

12 What instead we got was a notice from
13 Mr. Doubek that the matter was fully briefed and
14 submitted to the Court. And that happened, I
15 believe, in earlier September.

16 So the briefing regarding the proxies, the
17 validity of the proxies is done, except for it's only
18 done in the context of the TRO. I mean, it has to do
19 with whether or not the Court is going to issue or
20 continue the TRO that Bakken Resources already
21 received.

22 Let's continue to go forward. At the same
23 time we got our TRO here, BRI also got a TRO in
24 Nevada. And that also is in the documents that the
25 Court has, and it is attached to one of the earlier

1 pleadings that we did. I've got to find out where it
2 is. Here is another copy of it, though. It is an
3 attachment to briefing that's already been provided
4 to the Court. Issued another temporary restraining
5 order, which in large part says those proxies are
6 invalid. And this is the other order from the Court
7 in Nevada.

8 Specifically, what the Court said in its
9 order -- and this is also attached as an exhibit to
10 our brief in support of a motion to dissolve the
11 preliminary injunction here. The Court specifically
12 found that the defendant -- BRI in the case, because
13 it was brought initially by Allan Holms, or part of
14 it was -- defendants have a reasonable probability of
15 success in their arguments that the voting proxy
16 executed by Val Holms on July 7th and by Manny
17 Graiwer on June 29th, both in favor of Allan Holms,
18 are invalid based on SEC rules and regulations
19 pertaining to proxy solicitations.

20 It went on to say that defendants enjoy a
21 reasonable probability of success on their argument
22 that Eagle had properly exercised its right to put
23 and convert its loans to BRI, Series A, preferred
24 stock.

25 So as a result of that finding in Nevada,

1 the proxies upon which Allan Holms is relying, has
2 already been determined in Nevada to be no good.

3 THE COURT: They're not quite that far down
4 the road, are they?

5 MR. GOE: They are quite -- I overstate that
6 a little bit. What the Court said that the company
7 has a reasonable probability of success on his
8 argument that it's invalid.

9 Let me just jump forward just a little bit.
10 There was a hearing regarding the preliminary
11 injunction, the one that you were just looking at,
12 and that was held in October. And what the Court
13 decided to do -- it's October 19th by the way. And I
14 provided that as an exhibit to the Court in the
15 motion to stay. And I'll just provide the Court with
16 this entire mess. I apologize. We have so many
17 exhibits here.

18 THE COURT: I know. I am kind of swimming
19 in this stuff here a little bit.

20 MR. GOE: It's Exhibit 6, to the motion to
21 stay.

22 THE COURT: Okay.

23 MR. GOE: What the Court did was it decided
24 that there was going to be a trial and that trial is
25 going to occur in April. And the issues before the

1 Court in that trial include the proxy solicitation
2 issues, as well as the Eagle Equity transaction.

3 And it's our position, based on comity,
4 based on the first-to-file rule -- and, in this case,
5 there's no question about it, Defendant Val Holms is
6 the first one to try to attack the Eagle Equity
7 transaction, and he did so in Nevada. And, of
8 course, the Court in Nevada has been dealing with
9 this since 2014. It's going to have a trial in
10 April, which is going to include the issues currently
11 before this Court regarding the Eagle Equity
12 transaction, proxies, and, of course, the related
13 issues arising out of derivative action.

14 What the defendants represented by
15 Mr. Doubek asked for was a TRO, putting everything on
16 hold, stopping basically a shareholders meeting,
17 pending Court action. We agree with that. That
18 Court action is scheduled to have a full-blown trial
19 in April of 2017. And as we argue in our motion for
20 stay, principles of comity, first-to-file rule, and a
21 variety of other things, dictate that they get that
22 shot. That's why we are in agreement with their TRO.

23 Now, do we agree with all they are saying?
24 Absolutely not. All of this attack on Eagle Equity
25 and Wes Paul, et cetera, totally disagree with it.

1 But the fact of the matter is, for purposes of these
2 proceedings, we're willing to agree to the TRO, which
3 is the only issue before the Court right now.

4 THE COURT: Is this thing scheduled at all,
5 this case?

6 MR. GOE: We have no scheduling order at
7 all.

8 THE COURT: Out of this Court?

9 MR. GOE: That is correct.

10 That's our position, and we believe that any
11 testimony regarding other issues or "we want a
12 different restraining order than the one we already
13 requested" is not properly before the Court. It
14 would result in prejudice to us because we have not
15 had a chance to prepare for it. We basically asked
16 for the Court to enter the order they asked for.

17 THE COURT: So Mr. Doubek's got a couple of
18 folks that he's arranged to be here to testify. What
19 if we take their testimony?

20 MR. GOE: Your Honor, we have some
21 significant issues with the testimony. Now, I don't
22 know what Allan Holms is going to testify to, but
23 what I was provided today was something called,
24 "Defendant's third-party plaintiff's position." And
25 then attached to that is a memo written by a

1 Professor Dan Morrissey, relating to potential
2 testimony at hearing on December 12th of 2016.

3 Well, I would submit I just had an
4 opportunity for, like, 10 minutes before we started
5 out today to take a look at what this expert is
6 apparently being proffered for, but I would say it
7 relates in large part to issues that are not before
8 the Court, relating to this particular hearing.

9 Now, he wants to expand it into proxy issues
10 and all of the proxies are great and basically rebut
11 certain things that were brought up in the prior
12 pleadings, but we already had that argument. It was
13 already submitted to the Court. By their own
14 pleadings they submitted that issue to the Court.
15 And the relief they are specifically asking for in
16 their position statement is entirely different than
17 what this hearing is about.

18 So it's our position that no one should be
19 called to testify, and certainly not the professor,
20 Dan Morrissey, whose opinion, looking it over, is
21 basically a lot of legal opinions that this Court is
22 going to have to decide, not him.

23 But the underlying problem is that it's
24 relating to issues that are not before the Court
25 right now.

1 MR. DOUBEK: Your Honor, if I might, the
2 temporary order by this Court ordered that BRI and
3 its agents be temporarily enjoined from holding the
4 annual meeting until 60 days after the Court decides
5 whether the July 20, 2016, election of the new board
6 of directors was valid and enforceable. So the issue
7 of proxies is clearly pending. Whether or not the
8 Eagle Equity transaction was fraudulent, again, that
9 issue is what we're going to address. Whether there
10 was a triggering event allowing Eagle to convert its
11 loan to stock, again, something we're going to
12 address. And then, Number 2, temporarily enjoin from
13 allowing Eagle to vote on any matters at any time,
14 including an annual meeting or motion by shareholder
15 consent until the Court issues a ruling whether the
16 July 20th election of the new board was valid and
17 enforceable, whether the Eagle Equity transaction was
18 fraudulent, whether there was any triggering event to
19 allow Eagle to convert its loan to stock.

20 In other words, Bakken was ordered to show
21 cause why those things shouldn't be done and further
22 enjoined by the Court. And now they are here today
23 saying, "Well, we don't have anything to offer the
24 Court other than just keep it going because all of
25 this is going to be decided down in Nevada," in a

1 proceeding where, you know, Allan Holms has not been
2 served or participated and so forth.

3 And, by the way, the finding that the Eagle
4 Equity transaction satisfied the business judgment
5 rule, there were two opinions by two different Courts
6 down there. One said it was a sham, and the other
7 one said it seems to satisfy the business judgment
8 rule. That latter Court is the one that scheduled
9 the matter for trial.

10 And now we see -- we just received in the
11 mail another counterclaim, and so forth, that
12 probably is going to prolong that proceeding past the
13 point where it's been set. So, you know, who knows
14 when its going to be actually heard by a Court down
15 there.

16 We did submit a document outlining our
17 position, and we tried to, you know, be fair and give
18 notice that this is what -- this is the testimony
19 that we're going to present today so that everybody
20 is on the same page. Nobody has been surprised, too
21 surprised. And we would like to offer very limited
22 testimony by Mr. Allan Holms, and then a little bit
23 more but limited testimony by Professor Morrissey,
24 who is an expert in SEC matters and has taken a look
25 at a number of documents. We appended to his

1 statement of what he's going to address, all of the
2 documents that he's reviewed, his resume, articles
3 and books that he's authored, and so forth, so that
4 the Court knows that -- try to shorten the process
5 for a direct examination. Certainly, he's available
6 for cross.

7 So, your Honor, with that, we'd like --

8 THE COURT: I'm not sure, Mr. Doubek,
9 that -- this process just doesn't feel right to me;
10 that we're going into some of the substance of the
11 ultimate determinations that need to be made in this
12 case. It seems like this is a short-circuiting of
13 that. I haven't had a chance to absorb all this --

14 MR. DOUBEK: I know.

15 THE COURT: -- stuff by any means. Some of
16 this stuff was filed last week, and some even this
17 morning. So I have had no ability to absorb what all
18 these issues are and what I would need to listen to.
19 And I don't think there's been adequate notice
20 provided to the defense, or to BRI here.

21 MR. DOUBEK: Part of what we want to do is
22 just provide amplification on what's pending before
23 the Court, not that it's going to result in a final
24 binding decision by the Court at all. But in order
25 for the Court to keep -- to maybe modify the TROs

1 that are in place, we thought this testimony would be
2 good for the Court to hear.

3 THE COURT: But do I even have -- again, I
4 apologize for not having the opportunity to absorb
5 all of this or to even be aware of some of this. Do
6 I even have anything in front of me that is a motion
7 to modify the existing TROs? Do I have something
8 like that?

9 MR. DOUBEK: No, but you will have evidence
10 that would allow you to do whatever the Court wants
11 to do.

12 THE COURT: But isn't that part of the
13 notice requirement here? You are coming in today --
14 that's why I was confused when I came out here to the
15 bench. Their motion says they agree with your TROs
16 that you already have. Their statement paper agreed
17 with the TROs that are already in place. But now you
18 are standing up saying, "We want to change those."

19 MR. DOUBEK: Well, your Honor, I don't think
20 it's sufficient for them to say, "Oh, your Honor,
21 we'll agree to keep the TRO going," as opposed to --
22 you know, you ordered that they appear here and show
23 cause and so forth. And they are just saying, "No,
24 we're fine. We're fine with this." And I think the
25 implication of that is they should admit, then, to

1 the allegations that have been advanced in support of
2 the TRO. That is that the Eagle transaction, for
3 example, is a sham transaction. I don't think it's
4 sufficient for them to say, "Your Honor, don't worry
5 about it. It will all be handled down in Nevada.
6 We're perfectly fine for you to just keep the TRO in
7 place." I don't think that's satisfying what the
8 Court ordered that they do at this hearing.

9 THE COURT: Well --

10 MR. DOUBEK: Show cause why it shouldn't be
11 determined to be a sham transaction.

12 THE COURT: Well, I think what the order to
13 show cause is directed to is you have asked that
14 everybody kind of be stayed, put on hold.

15 MR. DOUBEK: Right.

16 THE COURT: And they come in and say, "We
17 don't agree with the reasons for why you want that,
18 but we'll go along with that."

19 Now, if your goal was to come in and say,
20 "Well, we want it put on hold except for these
21 particular determinations we made and these
22 particular actions to be allowed," I think that
23 requires further notice to them so they can come in
24 and respond to that.

25 MR. DOUBEK: And I understand what the Court

1 is saying, your Honor. But what we did -- when we
2 filed for this TRO, they had suddenly filed a 10K for
3 an annual report for the first time and announced
4 there was going to be a shareholder meeting. Well,
5 we knew that that was going to go nowhere, as far as
6 we were concerned, because Eagle Equity was going to
7 vote 51 percent of the vote. And so we thought
8 that's wrong because it's a sham transaction. They
9 shouldn't have the right to vote.

10 And so on the basis of that we asked the
11 Court to stay the annual meeting and order why they
12 shouldn't come in and demonstrate to this Court why
13 it shouldn't be regarded as a sham transaction, and
14 they are being derelict of their responsibility under
15 the Court's TRO by saying, "We're not going to fight
16 it. We're just going to be complacent before this
17 Court because, as a matter of comity, it's all in the
18 hands of the Nevada court."

19 And that makes it real difficult for all the
20 Montana shareholders, you know, to run down to Nevada
21 to participate. They ought to have a right to
22 participate in the proceedings that was initiated by
23 the company here in Montana.

24 And so all we're saying is that, your Honor,
25 the reason that gave rise to the TRO on October 19th

1 was our position that the -- there shouldn't be an
2 annual shareholder meeting with Eagle Equity because
3 it was a fraudulent transaction. And you ordered
4 them to appear before this Court and show why that
5 was or wasn't true.

6 And I don't think it's proper for them to
7 simply take the position, you know, "Judge, we're
8 just going to wait. We're going to defer. We'd ask
9 you to defer to Nevada." I don't think that's
10 proper, and I don't think it's fair to these
11 shareholders.

12 THE COURT: And I don't know that I need to
13 defer ultimately to the Nevada proceedings. But I'm
14 still troubled by the fact that you are coming in and
15 asking in your statement here that was given, the
16 defendant's third-party plaintiff's position, that
17 you are asking me to remove the temporary order,
18 temporary restraining order, and allow a vote to go
19 forward without Eagle Equity participation, reinstate
20 the third-party plaintiffs as the directors of
21 Bakken, strike the Eagle Equity transaction as a sham
22 that it is, order a shareholder meeting, appoint
23 someone to oversee the meeting and report back to the
24 Court the results thereof -- those are substantive
25 changes in the underlying foundation of what we're

1 doing here today.

2 MR. DOUBEK: And I agree, Judge. I think --

3 THE COURT: So what I'm thinking is you then
4 have an obligation to say this is a hearing on that
5 motion to modify the previously imposed --

6 MR. DOUBEK: But I don't think -- you know,
7 this is a hearing on the Court's temporary
8 restraining order.

9 THE COURT: Right.

10 MR. DOUBEK: Wherein the Court ordered that
11 they do certain things, show certain things, or else.
12 We don't know for sure what they are going to show,
13 so it would be -- it would be speculative of us to
14 file a motion to do anything, to modify anything.

15 But assuming that they come in -- and we
16 kind of thought, you know, this is what was going to
17 happen. So we thought maybe we'd better take the
18 bull by the horns and show the Court that there's
19 evidence, there's clear evidence that this
20 transaction is a sham. So if they don't satisfy
21 their burden of proof at this TRO hearing, that
22 there's an evidentiary record that the Court can rely
23 upon to issue a further order.

24 So, yeah, I would like the Court to do
25 certain things, but you are the judge. And I do

1 think, Judge, what you have done with your TRO order
2 is being flaunted by -- yeah, that's too harsh a
3 term.

4 THE COURT: I guess I'm having a hard time
5 understanding that because you asked me to do
6 something.

7 MR. DOUBEK: Sure.

8 THE COURT: You asked me to issue a
9 temporary restraining order, and I do it. I give you
10 what you want. And I tell them, "Come in and tell me
11 why there shouldn't be a temporary restraining
12 order." And they come in and say, "Judge, we don't
13 object to a temporary restraining order under the
14 terms you have already imposed. We don't object to
15 that."

16 So why is that flaunting it or disregarding
17 it or why haven't they done what they are supposed to
18 do?

19 MR. DOUBEK: Then it should go to the next
20 step and become a preliminary injunction based upon
21 the proof, or lack thereof, to resist the TRO.

22 THE COURT: Well, did you object to a
23 preliminary injunction going forward?

24 MR. GOE: Your Honor, what our position
25 is -- and this was relayed to John before this

1 hearing today -- that our position is that we'll live
2 with these, pending a judicial determination of the
3 issues they outlined in the TRO that they requested.
4 We have a TRO. They have a TRO. Their argument in
5 their application and in their briefing was, "We've
6 got to keep the status quo until a Court decides the
7 issues relating to the Eagle Equity transaction and
8 the proxies."

9 THE COURT: Right.

10 MR. GOE: We agree.

11 MR. DOUBEK: And we fully expect --

12 MR. GOE: Excuse me.

13 MR. DOUBEK: Oh, excuse me. I'm sorry.

14 MR. GOE: And we agree. And whether it's
15 called an extension of the TRO or a preliminary
16 injunction -- because that's what we asked for, the
17 same relief that they are asking for, essentially --
18 that's what should happen.

19 And what they asked for specifically was
20 enjoin from holding our annual meeting until after
21 the Court decides whether the July 20th -- blah,
22 blah, blah, goes on from there. And we're saying,
23 "That's correct. That's why we agreed to this.
24 That's our position."

25 And, now, if they want to come in and

1 present a whole bunch of testimony regarding -- to
2 basically convince the Court that the transaction
3 should be looked at more carefully and it's a fraud
4 or a sham, that's not an issue before the Court
5 today. The issue before the Court is solely whether
6 this TRO should stay in place or be a preliminary
7 injunction, whatever the Court wants to characterize
8 it, pending a judicial determination of the
9 underlying issues.

10 And, as I said before in my earlier
11 discussion with the Court, the fact of the matter is
12 they challenged this first in Nevada. That's where
13 they went. That's where they wanted to litigate that
14 particular issue. A trial for that is set in April.

15 Now, ultimately, this Court may decide that
16 it has to decide some of these issues. We will have
17 a scheduling conference. We'll do discovery. We'll
18 have a hearing after we have notice that the issue is
19 something different than what they want. That's when
20 you present testimony to the Court regarding these
21 various issues, after we have had notice and after
22 both parties have had the opportunity to do what they
23 feel to be appropriate to present their case.

24 Instead, what happens here -- and we agree
25 to TRO, we agree to keep it in place -- they come to

1 this Court this morning wanting a different result
2 from this Court, of which we had no notice of and
3 want to present testimony on issues that we had no
4 notice of. And that's where I think the Court is
5 correct that the testimony and the things that they
6 want to present now are not properly before the
7 Court. Thank you.

8 MR. DOUBEK: Your Honor, and, once again,
9 the TRO that the Court issued to Bakken and its
10 agents was that they should show cause why these
11 findings by the Court should not be made permanent,
12 pending a further hearing, not just continued because
13 something is going on down in Nevada.

14 You know, they have an obligation to come
15 into this Court under this TRO and demonstrate why
16 that Eagle Equity transaction is valid or whether
17 it's a sham, why the election that was done on
18 July 20th should be recognized or shouldn't be
19 recognized. And they are here -- they have shown up
20 with no proof, not one scintilla of evidence are they
21 offering to the Court.

22 And so we're going to offer the evidence to
23 the Court so that the Court knows that it's proper
24 and there's a basis for continuing this injunction on
25 a temporary injunction basis.

1 THE COURT: But isn't some of what's going
2 on down in Nevada -- you know, I'm supposed to take
3 judicial notice of Court decisions and laws in other
4 states that are going on with regard to issues before
5 this Court. Isn't this some evidence of their
6 position that it's not a sham, that the proxy
7 solicitation was not invalid -- or was invalid. I
8 mean, so there's something there that --

9 MR. DOUBEK: There's something there to
10 reckon with, and that's why we were here with
11 evidence to present to the Court.

12 THE COURT: But it seems --

13 MR. DOUBEK: Our people were not involved in
14 that proceeding down there. Val Holms was, but Allan
15 Holms wasn't.

16 THE COURT: Well, okay.

17 MR. DOUBEK: A lot of these decisions have
18 been made in the -- and this last decision by the
19 Court in October, as I understood from other counsel
20 in the case, it was more a discussion amongst counsel
21 used as a status conference to determine where we go
22 from here.

23 THE COURT: Well, I am not comfortable with
24 the idea that we're going to proceed with evidentiary
25 presentation here today. I don't feel that there was

1 adequate notice provided to BRI of what we were going
2 to be talking about today. I think the issue was
3 whether the TRO should remain in effect. And they
4 have an obligation, if they don't want it to remain
5 in effect, to come in and tell me why they don't want
6 it to remain in effect. If they do not object to
7 that, then the goal of the TRO, the temporary
8 restraining order, has been achieved. You have what
9 you asked for. They haven't convinced me to alter
10 it.

11 Now, if you want to alter it, I think
12 there's an obligation on your part to say clearly
13 what you intend to alter it to. And it seems like
14 what you're getting into is the substance. The
15 ultimate issues that need to be decided in the case,
16 whether this Eagle Equity transaction was valid,
17 whether this proxy solicitation was valid -- but
18 those I think are factual determinations that are
19 made, not at this earlier stage of the proceeding,
20 but after full discovery and after we go through the
21 process of getting people ready to present testimony
22 on both sides of those particular issues. At this
23 point they are just saying we're willing to go along
24 with what --

25 MR. DOUBEK: Then, your Honor, I think that

1 the TRO should be made a preliminary injunction.

2 THE COURT: All right.

3 MR. DOUBEK: I will prepare an order for the
4 Court.

5 THE COURT: Okay. I am comfortable with
6 that approach, that we would have a preliminary
7 injunction.

8 And I guess, just to be real clear, I'm not
9 making a determination at this point that we are
10 completely bound by the time frame down in the Nevada
11 proceedings at all.

12 MR. DOUBEK: Thank you.

13 THE COURT: They are going to go along --
14 because it could be that you are going to get up to
15 March and somebody is going to come in and say, "Oh,
16 we need to have a continuance. This thing can't be
17 decided until next December." That's not going to
18 bind our --

19 MR. DOUBEK: And I know there was another
20 pleading that was just filed this week or so.

21 THE COURT: So that doesn't necessarily tie
22 our hands into an ultimate determination of the
23 issues that are before the Court.

24 But I do think at this point I'm just not
25 comfortable with the idea that we're going to go

1 forward with some sort of a substantive hearing on
2 some of the ultimate issues in the case given that
3 BRI is agreeable to the continuation of a temporary
4 restraining order or an issuance of a preliminary
5 injunction.

6 MR. DOUBEK: We'll talk to your clerk about
7 a time.

8 THE COURT: Get a schedule.

9 MR. DOUBEK: Okay.

10 THE COURT: Is that good?

11 MR. GOE: Your Honor, the only other thing I
12 would mention is we have a TRO now. Even if it's
13 designed to keep the status quo, the Court has
14 already continued that in the last hearing we had. I
15 don't know if the Court wants to characterize that as
16 a preliminary injunction as well so that everybody
17 basically stands down pending, ultimately, the
18 determination of the Court. And we have already
19 fully briefed that. It's already been before the
20 Court. We already had a hearing on it.

21 MR. DOUBEK: We certainly didn't agree to
22 any TRO, and we resist it. So I would --

23 THE COURT: Did you get --

24 MR. DOUBEK: -- object to simply including
25 that in a preliminary injunction.

1 THE COURT: Okay. Did Judge Seeley sign off
2 on that one?

3 MR. DOUBEK: She gave them the TRO
4 initially. She was disqualified on Friday. She just
5 continued it. And then following the hearing on
6 August 9th, you said, "I am just going to continue
7 things for the time being."

8 THE COURT: Okay.

9 MR. DOUBEK: I think that's accurate.

10 MR. GOE: It is still in place. You
11 indicated you were going to keep it in place until
12 you had a chance to look at all of this.

13 MR. DOUBEK: Judge, the pile is getting
14 bigger.

15 THE COURT: I know. I say I'm going to look
16 at all of this stuff, and then all of this stuff
17 keeps getting bigger and bigger.

18 MR. DOUBEK: I do not even want to see your
19 Monday mail.

20 THE COURT: Yeah, I know. I have a whole
21 stack in there.

22 MR. DOUBEK: Don't look at it.

23 THE COURT: I won't.

24 MR. DOUBEK: Just don't look at it.

25 THE COURT: So, anyway, I want to keep

1 everything -- the goal here is to keep everything in
2 place, status quo in place.

3 MR. GOE: Thank you.

4 MR. DOUBEK: We'll prepare the preliminary
5 injunction.

6 THE COURT: Okay. Good enough then?

7 MR. GOE: Thank you.

8 MR. DOUBEK: Thank you.

9

10 The proceedings concluded at 11:13 a.m.

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REPORTER'S CERTIFICATE

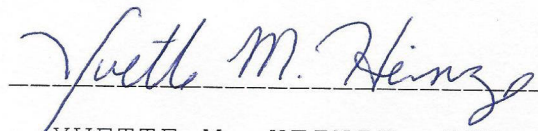
I, Yvette M. Heinze, a Registered Professional Reporter, residing in the City of Helena, State of Montana, hereby certify:

That prior to being examined, the witnesses named in the foregoing proceeding were sworn to testify to the truth, the whole truth, and nothing but the truth;

That the said proceeding, taken down by me in stenotype, was thereafter reduced to typewriting by computer-aided transcription under my direction and is a true record of the testimony given.

I further certify that I am not in any way interested in the outcome of this action and that I am not related to any of the parties thereto.

Witness my hand this 12th day of January, 2017.


YVETTE M. HEINZE, CSR, RPR